IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

1) S.B. CIVIL WRIT PETITION NO.5617/2007.

Gulshan Rai Malhotra
Vs.
Tilakraj & Anr.

2) S.B. CIVIL WRIT PETITION NO.3306/2007.

Dharamveer Malhotra
Vs.
Tilakraj

Date of Order : November 19, 2007.

PRESENT
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri A.C. Upadhyay for the petitioners.
Shri R.P. Garg for the respondent.

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BY THE COURT:-

Heard learned counsel for the parties.

2) These two writ petitions have been filed against two different orders passed by the Rent Tribunal, Jaipur City, Jaipur dated 17/4/2007 and 6/7/2007. Both these orders have

been passed in the same proceedings initiated on original application filed by respondent No.1 who is landlord and petitioners are tenants. The petition was filed for eviction on the ground of personal bonafide necessity. Objections were raised by the petitioners as to production of gift-deed by the landlord alleging that the alternative accommodation which was cited by the petitioners-tenants as available to the landlord has been gifted by him to his daughter. The objections raised by the petitioners are three fold namely:

(i) That the gift-deed unless produced in original, cannot be taken as admissible in evidence and in the present case only photocopy thereof was produced.

(ii) That the gift-deed unless registered with the proof of payment of sufficient stamp duty, cannot be taken as admissible in evidence.

(iii) That the gift-deed has to have not

only the signatures of the donor but also of the donee so as to prove the acceptance of the gift by him.

3) According to the learned counsel inspite of the fact that these three things were absent in the gift deed produced by the landlord in evidence with his rejoinder, the learned Rent Tribunal ignoring these objections exhibited the same in evidence and thus admitted inadmissible document in evidence. Learned counsel for the petitioners has further pointed out that apart from not accepting the objection aforesaid, the learned Tribunal has in the impugned order dated 17/4/2007 has gone to the extent of observing that the tenant has no right to raise objection of this nature.

4) Shri R.P. Garg, learned counsel for the respondents has opposed the writ petition and has argued that the document was merely filed with the rejoinder as per the procedure

prescribed under the Rent Control Act, 2001 and its number was already marked. No separate order was passed to formerly admit the same in evidence. Application filed by the petitioners came to be dismissed by the Tribunal holding that final view of the matter is yet to be taken by the Tribunal as and when the petition shall be taken up for final arguments. Shri R.P. Garg, learned counsel for the respondent further argued that it was categorically submitted by the landlord before the Tribunal and the Tribunal has taken note of the argument made by the landlord that the original gift deed is in possession of the widow daughter of the landlord and as and when she appears in evidence, same shall be produced by her and that the landlord has already produced negatives of the photo thereof and, therefore, objections were misconceived. Therefore, writ petitions may be dismissed.

5) Having considered the submissions of the parties and perusal of both the impugned-orders, I find that the learned Tribunal by the impugned-order dated 17/4/2007 has not entertained the objections filed by the petitioners by observing that original gift deed is always written by the donee and donor merely retains its copy which was produced by him. This issue shall be examined at the time of recording of the evidence. In the second order dated 6/7/2007, the learned Tribunal rejected the application of the petitioners to the same effect observing that the affidavit of the person who had taken photo of the gift deed was not necessary to be filed and document filed by the landlord could not be held to be not admissible in evidence at this stage merely on the ground that it was not registered. The Tribunal further held that all the issues shall be considered at the time of

final hearing.

6) A conjoint reading of both these orders makes it clear that though the Tribunal was clear in its mind while it held that all these issues shall be considered at the time of final arguments but, in so far as the observation given in the order dated 17/4/2007 that the tenant could not raise objection of this nature is concerned, that observation, in my considered view, was wholly uncalled for and could not have been made at this premature stage particularly when the Tribunal was dealing with the very same objections raised at the instance of the tenants. The *lis* is between the landlord and tenants and whatever legal objections are available to the tenants to be raised in the pending *lis,* could be raised by them. Though, the learned Tribunal was correct in holding that the objections shall be considered at the time of final hearing but at premature stage, very right of

the tenant to raise such objection could not be denied.

7) The observation to the above effect made in the order dated 17/4/2007 is ordered to be deleted and the orders aforesaid are accordingly modified with the directions that the Tribunal shall at the time of final disposal of the petition, decide the objections raised by the petitioners as enumerated hereinabove.

The writ petitions are accordingly disposed of though with no order as to costs.

(MOHAMMAD RAFIQ), J.

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